Essays on Law

Volume-1

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Dedicated to

My late grandfather late Mr. Azim Uddin Member

&

My father late Mr. Ali Akbar Sardar

Preface

All praises are due to Allah the almighty who has enabled me to pen the few lines contained in this booklet. This booklet consisting of ten short essays is a very humble attempt on my part to learn law; I don't have the faintest claim to any originality or of the booklet being worthy of teaching anything new or unique to anyone, let alone my comrades in the noble profession of law.

Of the ten essays presented herein, the very first one titled '*Of Hasan and the ETV*' and the second one named '*What ails the District Councils?*' were published in the premier English language newspaper of Bangladesh *the Daily Star* on 01.12.2006 and 05.05.2016 respectively. All the rest were published in the law-news portal lawyersclubbangladesh.com.

Hard have I toiled trying to pick up the art of writing for decades more than one; this booklet being the first one, more are in the offing. While I am of the view that booklets or books are to be printed, I contend myself with online self-publication for the time being.

Much ado about nothing. Happy reading, instead!

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List of Acronyms

SL#	Acronym	Full Expression	SL#	Acronym	Full Expression
1	AC	Appeal Cases	17	CJ	Chief Justice
2	AD	Appellate Division	18	Kar	Karnataka
3	AIR	All India Reporter	19	KB	King's Bench
4	ALT	Andhra Law Times	20	LG	Law Guardian
5	BLD	Bangladesh Legal Decisions	21	MLW	Madras Law Weekly
6	B.L.R	Burma Law Reports	22	MoU	Memorandum of Understanding
7	Bom	Bombay	23	PIL	Public Interest Litigation
8	CC	Chief Court	24	RMMRU	Refugee and Migratory Movements Research Unit
9	CHT	Chittagong Hill Tracts	25	SC	Supreme Court
10	Crl	Criminal	26	SCC	Supreme Court Cases
11	Cri.L.J	Criminal Law Journal	27	SCR	Supreme Court Reports
12	DLR	Dhaka Law Reports	28	SPL	Special
13	All ER Rep	All England Law Reports	29	UKHL	United Kingdom House of Lords
14	HCA	High Court of Australia	30	UNO	United Nations Organizations
15	HCD	High Court Division	31	U.S.	United States
16	J	Justice	32	WP	Writ Petition

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Of Hasan and the ETV

The other day we some colleagues at the local law college frantically raised sort of a storm over the tea cup on the ceaseless talk of the country, i.e., the thorny issue of the Non-Party Caretaker Government at the helm of the affairs of the state right now. Of the interesting deliberations that took place, some took my fancy inevitably. One of them was that despite enormous popularity, commitment and potentiality, the final hour set in for the now-defunct Ekushey Television (ETV) as soon as the then Prime Minister, Sheikh Hasina, reportedly transpired that it was she herself who named the said TV channel as it was. Perhaps this rather casual statement made by her drew, the discussant concerned opined, the sharp attention of her political rivals. Henceforth, they went on despising the ETV taking it for the AL's propaganda machine and then they came down heavily upon it at the very earliest opportunity making sure that it was done for, at least for the time being.

The same discussant came up with the unique idea that whatever came to pass as to the country's former Chief Justice Hasan's taking over as the Chief Adviser of the present Care-taker Government were again the collective outcome of the same kind of zeal and arrogance on the part of the immediate past government. That he would eventually end up far from assuming the mammoth responsibility was virtually made clear the very moment the age-limit for retirement of the judges of the Supreme Court was increased by the over-enthusiastic government of the day to pave the way for Hasan to become the next Chief Adviser. Given his track-record of being upright throughout his judgeship, who could hold for sure he was not poised for the required service to the nation? To my utter surprise, most of the gentry present readily subscribed to this view. Not that I myself didn't felt inclined at all, too.

As a matter of fact, politics as practised by our statesmen has taken to the evil way so profoundly that it hardly leaves room for mutual tolerance, trust and respect among the political parties. The way the political parties oppose one another on each and every national issue sans any consideration for rationality or acceptability never fails to get the citizens quite dismayed. To speak the truth, opposition for opposition's sake has been the single creed of the political parties here. Isn't it high time things were beginning to change for the better in the greater interest of the nation?

What ails the District Councils?

Ours is a democratic country. That's precisely why democracy has been embodied as one of the state principles in the Constitution of Bangladesh. In fact, our democratic aspirations played a major role in our Liberation War, leading to the independence of the country.

The original Constitution of the People's Republic of Bangladesh truly reflected these aspirations of the citizens of the country. This is manifest in many provisions of the Constitution. One of these provisions is Article 59. Ironically enough, some of the finest provisions of the original Constitution have been amended and re-amended while Article 59 has managed to stay intact, surviving the test of time. For the purposes of driving home the contention of the point, let's take

a look at this particular Article of our Constitution.

Article 59: (1) Local government in every administrative unit of the Republic shall be entrusted to bodies, composed of persons elected in accordance with law.

(2) Everybody such as referred to in clause (1) shall, subject to this Constitution and any other law, perform within the appropriate administrative unit such functions as shall be prescribed by Act of Parliament; which may include functions relating to:

(a) administration and the work of public officers;

(b) the maintenance of public order;

(c) the preparation and implementation of plans relating to public services and economic development.

Even a cursory reading of this Article suggests that the concept of local government has been duly recognised in our Constitution. That leads one to the establishment and functioning of the Union Councils, Upazila Councils and the District Councils. It is common knowledge that though the Union Councils and the Upazila Councils are in place and doing a seemingly good job, District Councils have a very different story to tell. Besides, the Upazila Councils are plagued by lack of power vis-à-vis jurisdiction, coupled with conflicts between the chairmen and the Upazila Nirbahi Officers. Secondly, the Constitution contemplates elected representatives of the people manning the offices of all tiers of the local government. The Constitution by no means contemplates selected or nominated or hand-picked people to run the show. It is, in fact, a mandatory provision of the Constitution, as evidenced by the word shall in the construction of the Article, implying that no exceptions can be made here. Mention may, in this connection, be made to the celebrated judgment pronounced by the Supreme Court of Bangladesh in the case of **Kudrat Elahi Panir Vs. Bangladesh** reported in 44 DLR (AD) (1992) 319. But, as we are all aware, this is not the case with the District Councils, as these are now being run by nominated, hand-picked and unelected persons loyal not to the people but to the government of the day. The scenario is just the same with the City Corporations. Take, for instance, the case of the Dhaka City Corporation. While the AL-led government split Dhaka up into two, styling them as Dhaka South and Dhaka North, allegedly violating Article 5 of the Constitution, elections to the same were long overdue. Hence, bureaucrats, instead of elected representatives, were managing the day to day affairs of the corporation (s).

On top of it all, elections to the Hill District Councils in the Chittagong Hill Tracts have not been held for over two decades. The tenure of the first Local Government Councils turned Hill District Councils elected in 1989 has expired, and nominated councils have been in charge since then.

There have been intermittent outcries for elections to be held, but in vain. For long, a section of the tribal leaders have insisted on drawing up a separate voters' list in tune with the Peace Accord signed in 1997. The problem is that the relevant provision of the Peace Accord will prevent Bangalis with no recorded land property in the CHT from being registered as voters. One has to disagree with the essence and import of the provision, as it is in clear violation of Article 122 of the Constitution, wherein the qualifications for registration as voters have been prescribed. Article 122 doesn't set having recorded land property as a pre-condition for registration as voters, while the Peace Accord does. Moreover, a provision contained in any law, rules, regulation, treaty or accord can't be considered superior to the Constitution, enjoying the status of the supreme law of the land. As a matter of fact, this provision has already been declared ultra vires to the Constitution by the Honourable High Court Division of the Supreme Court of Bangladesh by way of the celebrated judgment in the case of **Mohammad Badiuzzaman and Another Vs. Bangladesh and Another** reported in (2010) 7 LG (HCD) 208. The government of Bangladesh was supposed to adopt all the persuasive and legal measures to pave the way for the preparation of the voters' list meant for the elections to the Hill District Councils long ago. Contrarily, what the successive governments have gone for is the nomination of councils one after the other. Added to that is another administrative anomaly. The government has amended the Hill District Council Acts of 1989, thereby giving permanency to the inequitable process of nominating councils and also increasing the number of nominated members of the Councils from four to fifteen.

Nominated plus unelected persons put-in-charge of running the District Councils have understandably failed to live up to the expectations of the citizenry at large. For one thing, they are not at all accountable to the voters or citizens or the people. Thus there is scope for rampant corruption. They apparently don't actually have to think about the preparation and implementation of plans to ensure public services and economic development in the respective areas, as envisaged per Article 59 of the Constitution.

All these present a chaotic scenario in terms of the repeated and prolonged violations of the sacred Constitution, resulting in the infringement of democracy, thereby causing a blow to our democratic aspirations and ideals.

On the Establishment of Circuit Benches of the High Court Division

There has been an intermittent demand for the establishment of Circuit Benches of the High Court Division of the Supreme Court of Bangladesh at the eight Divisional Headquarters for long now. In response to the said demand earlier, the Chief Justice of Bangladesh Mr. Justice Surendra Kumar Sinha (as he then was) disclosed in Chattogram back in 2017 that the government was favourably considering the feasibility of the Circuit Benches. Now that the Virtual Courts at all tiers of the judiciary are operating successfully, the demand for the Circuit Benches appears to have been reiterated.

In legal parlance, Circuit Benches refer to temporary benches of the High Court Division to be seated at different Divisional/District headquarters beyond the Capital and operating at such intervals as determined by the Chief Justice of Bangladesh. For one thing, the concept of Circuit Benches has all along been embodied in the Constitution of Bangladesh since the day it come into being. On the other hand, once Circuit Benches are set up and get functional, the citizens are to be immensely benefitted in terms of access to justice.

Article 100 of the Constitution as in the original Constitution of 1972 states that the permanent seat of the Supreme Court shall be in the Capital; the permanent seats for both the Appellate Division and the High Court Division of the Supreme Court shall be in Dhaka. At the same time, Article 100 provides that sessions of the High Court Division may be held at such other place or places as the Chief Justice may, with the approval of the President, from time to time appoint. The Ershad regime in an unprecedented and somewhat misconceived move passed the Eighth Amendment to the Constitution in 1988 amending Article 100 and providing for the establishment of Permanent Benches of the High Court Division in Barishal, Chattogram, Cumilla, Jashore, Rangppur and Sylhet. Though the said amendment resulted in setting up of Permanent Benches of the High Court Division in those places further facilitating the citizens' access to justice, prominent lawyers took exception to the amendment waging a movement and filing a Writ Petition against it. As a result, relying on the doctrine of Basic Structure, the Appellate Division of the Supreme Court of Bangladesh struck down the said amendment as being ultra vires to the Constitution by way of a majority **Judgment** (3:1) in **Anwar Hossain Chowdhury Vs. Bangladesh** reported in 41 DLR AD 165 and 1989 BLD (SPL) 1. The Supreme Court held in the said Judgment, inter alia, that Article 100 formed part of the Basic Features of the Constitution immune to amendments and there is no scope in law to establish Permanent Benches of the High Court Division outside Dhaka the Capital. Hence, the aforesaid Permanent Benches of the High Court Division came to naught.

As stated herein above, establishment of Circuit Benches of the High Court Division, not Permanent Benches thereof, were envisaged by the founding fathers of the Republic as well as the framers of the Constitution. For the same reason, though the Supreme Court outlawed the Permanent Benches that came to be set up outside the Capital, the learned Judges concerned seemed to have left the establishment of other types of temporary Benches, i.e, the Circuit Benches to the discretion of the Executive.

Circuit Benches of the High Courts or equivalent Courts are there in place in many countries including India and Pakistan. Interestingly enough, the initiative of setting up Circuit Benches tend to give rise to mixed reactions among the stake-holders in general and lawyers in particular. Partial decentralization of the High Court Division effected through estalishment of the Circuit Benches may lead to conflict of interest among some lawyers practising before the Supreme Court. Some argue that the Circuit Benches may lack in infrastructural facilities. Another view is that due to shortage of adequately qualified and trained lawyers, the Circuit Benches may result in lowering the reputation of the higher judiciary in the estimation of the common man. But there are stronger arguments in favour of the Circuit Benches. The Circuit Benches in tune with Article 35 of the Constitution will ensure speedy trial and expeditious disposal of the cases contributing significantly to the reduction of the huge backlog of cases pending before the Supreme Court; they would save time and costs of litigation to a great extent, thereby empowering all strata of the citizens to seek legal redressal of their grievances and so on.

A study of the relevant Case-Laws from the indian jurisdiction may be of immense interest with regard to the initial reactions of lawyers and the corresponding judicial interventions as to the establishment of the Circuit Benches of various High Courts there. Individual lawyers and even Bar Associtions moved various High Courts and the Supreme Court of India both for and against the Circuit Benches. What inspires confidence is that the High Courts and the Supreme Court of India were at one in allowing the petitions for the Circuit Benches and in dismissing petitions that opposed the same. Mention may in this connection be made of the cases such as Rajasthan High Court Advocates' Association Vs. Union of India and Others reported in AIR 2001 SC 416, Federation of Bar Associations in Karnataka Vs. Union of India reported in AIR 2000 SC 2544 and (2000) 6 SCC 715, State of Rajasthan Vs. Prakash Chandra and Others reported in AIR 1998 SC 1344 and (1998) 1 SCC 1, State of Maharashtra Vs. Narayan Shamrao Puranik and Others reported in AIR 1983 SC 46, E. Ram Mohan Chowdry Vs. Registrar General, High Court of Karnataka reported in AIR 2008 Kar 1951 and K. Sridhar Kumar Vs. The Union of India.

In view of the ground realities, tremendous progress of technology, relevent statutory laws and judicial precedents, there seems to be no legal bar to the establishment of the long-awaited Circuit Benches.With nearly five decades gone by after Bangladesh's emergence on the map of the world as an independent and sovereign country through the tears and blood shed by the valiant sons and daughters of the soil, it is high time Circuit Benches of the High Court Division of the Supreme Court of Bangladesh were set up in such places as to the Chief Justice of Bangladesh seem fit and proper for the benefit of the whole nation.

Matters of Urgency and the Need for Virtual Courts

There is no denying the fact that the citizens' right to justice is of paramount importance. The courts are the avenues justice is ensured through. And as the old quote goes, the doors of the courts are always open like that of the hotel Ritz! But as ill-luck would have it, that is not the case with the courts now due to the coronavirus pandemic; the doors of the courts are mostly locked.

In a country beset with huge backlogs of cases like ours, there is no dearth of matters of urgency that warrant immediate attention such as bail, injunction, writ and the like. That's precisely where the question of virtual courts creeps in.

Upon the promulgation of the Ordinance No. 1of 2020, virtual courts are now in action across the country, though the same are dealing with only bail matters in criminal cases and writ petitions while urgent matters of civil injunction and criminal injunction under Sections 144 and 145 of the Code of Criminal Procedure, 1898 remain far from being available.

While the citizenry at large including a section of the lawyers welcomed the timely move introducing the virtual courts, most of the lawyers appear to be opposing it on filmsy grounds. At the backdrop of such opposition, one may have a cursory look at the law concerned as well as a few judicial precedents from home and abroad.

Article 31 of the Constitution of Bangladesh states that it is the inalienable right of the citizens and other persons for the time being within Bangladesh to enjoy the protection of law and to be treated in accordance with law, and only in accordance with law. Article 32 ensures that no person shall be deprived of life or personal liberty save in accordance with law while Article 33 provides for safeguards as to arrest and detention and the right to consult and be defended by a legal practioner of choice.If the courts remain closed, the citizens are deprived of all these fundamental rights. That is a phenomena by no means contemplated by the constitution of the Republic. As it comes to the courts, they are simply unable to operate without the assistance of the lawyers. Despite the fact that individual lawyers enjoy the right to refuse to receive briefs that they don't like for one reason or the other, lawyers being oath-bound under the Bangladesh Legal Practitioners and Bar Council Rules, 1972 are presumably barred from boycotting the courts en masse. Under the circumstances enumerated above and at the backdrop of the ongoing pandemic, could there be a way out any better than the introduction of the virtual courts?

That said, with Article 107 of the Constitution providing the Supreme Court with the power to make rules for regulating the practice and procedure of each division of the Supreme Court and of any court subordinate to it having been in place since day one of the constitution's coming into force, one may wonder if it was expedient to promulgate the Ordinance No. 1 of 2020 at all. That is, the Supreme Court is in a position to pass such orders as to it seem fit and proper for the introduction of the virtual courts. What is more, this power of the Apex Court has further been affirmed in the celebrated **Judgment** passed by the hon'ble Appellate Division of the Supreme

Court of Bangladesh in the case of **Anwar Hussain Chowdhury Vs. Bangladesh** popularly known as the famous Eighth Amendment Case reported in 1989 BLD (SPL) AD 1/ 41 DLR AD 165.

Special arrangements made with a view to dealing with the matters of urgency within the purview of law are no strangers to our Apex Court. Mention may in this connection be made of the **Judgment** passed by the hon'ble High Court Divisin in the case of **Human Rights and Peace for Bangladesh and 6 Others Vs. Banglades**h and Another (Writ Petition No. 6795 of 2005) which paved the way for operation of civil vacation courts to deal with urgent matters during the month of December every year under Section 36 of the Civil Courts Act, 1887.

Looking beyond at the indian jurisdiction, one comes across instances of judicial precedents requiring virtual operation of the proceedings even in family matters due to the seat of the courts concerned being far away from the location of the parties. One may refer to the **Judgment** passed by the Supreme Court of India in the Case of **Krishna Veni Nagam Vs. Harish Nigam** reported in (2017) 4 SCC 150**.**

One understands that as the very concept of virtual courts are quite unique here in Bangladesh, the lion's share of the lawyers stand, as of now, baffled and puzzled. As the dust cools down a bit, things will, for sure, brighten up in the days to come. The respective Bar Associations would fare really well by being up and doing to encourage the members as to the virtual courts.

The need for successful operation of the virtual courts during these difficult times can not be overstated. While we look forward to the dawn when we get rid of the havoc the pandemic has caused, it is time ways of extending the jurisdiction of the virtual courts are thought out and planned well ahead for the ends of justice in case the pandemic persists. The virtual courts poised to usher in a new era would play a pivotal role in upholding rule of law.

The Virtual Courts vis-à-vis the Open Courts

*'**Not only must justice be done, it must also be seen to be done'***-so goes the oft-quoted aphorism propounded arguably first by Lord Hewart CJ and his companion Justices Lush and Sankey JJ in the **Judgment** in **R Vs. Sussex Justices, Ex Parte McCarthy** reported in 1924 1 KB 256 and 1923 All ER Rep 233 respectively.

That the courts of law tasked with the noble duty of dispensing justice should, subject to holding trial-in-camera per provisions contained in a few special laws, be open to all and sundry has by now been recognized globally as a well-settled principle of law.

As a matter of fact, the concept of the open courts is an anti-thesis to secrecy in judicial proceedings in general. To borrow from Jeremy Bentham as referred to in the **Judgment** in **Scott Vs. Scott** reported in [1913] AC 417/ [1913] UKHL 2 -"***In the darkness of secrecy sinister interest and evil in every shape, have full swing—-Where there is no publicity there is no justice. Publicity is the very soul of justice. It is the keenest spur to exertion and surest of all guards against improbity. It keeps the Judge himself while trying under trial.***"

The framers of the Constitution of the Republic of Bangladesh were not oblivious to the virtues of the open courts; hence Article 35 of the Constitution states, inter alia, that every person accused of a criminal offence shall have the right to a **public** trial. Besides, Section 352 of the Code of Criminal Procedure, 1898 provides for the courts to be open to the public in general while Section 353 and Section 366 mandatorily require the courts to take evidence and pronounce judgment in the open courts just as Rule 4 of Order 18 and Rule 1 of Order 20 of the Code of Civil Procedure, 1908 respectively do.With the promulgation of the Use of the Information Technology in Court Ordinance (Ordinance No.1 of 2020) destined to become an Act of Parliament in due course, the realities of the open courts have, so to speak, gathered momentum in our domestic jurisdiction.

Despite the fact that national legal regimes with contrary legal provisions tend to hold the open courts back in some foreign jurisdictions, judicial activism elsewhere appears not to have backed down from giving impetus to the open courts allowing even Audio-Video (AV) recordings of the court proceedings posted online. Shining examples are many in number. In 2018, the Supreme Court of India in the very elaborate **Judgment** passed in **Swapnil Tripathi Vs. Supreme Court Of India** reported in (2018) 10 SCC 628 allowed live dissemination of proceedings before the Supreme Court of India with the aid of Information and Communications Technology (ICT). The Supreme Court of The United States held in the **Judgment** in **Chandlier Vs. Florida** reported in 449 U.S. 560 (1981) that it was legal for a State to allow the broadcast and still photography coverage of criminal trials. The High Court of Australia which is in fact the highest court in that country also was of the same opinion in the **Judgment** passed in the case of **Grolla Vs. Palmer** reported in (1995) HCA 26.

Legal experts, lawyers and judges from both home and abroad are of the opinion that the virtual courts in the truest sense of the term contribute significantly to the lofty concept of open courts that would further stengthen rule of law; the more open the courts are, the more transparent, corruption-free, educative and speedier they are; Moreover, public trial in open court is a sin-qua-non for the healthy, objective and fair administration of justice; While acting as a check against judicial caprices or vagaries, public scrutiny helps create confidence of the public in the fairness and impartiality of the judiciary. But quite unlike the other two organs of the state, i.e, the legislature and the executive, the proceedings of the judiciary have hithterto remained mostly secluded and jealously guarded from the view of the public at large. Things have of late started to change for the better with the introduction of the virtual courts, though.

Over the past few days, the virtual courts having operated with considerable success have garnered hopes among the stake-holders here. With the favourable legal regimes in terms of the virtual courts coupled with the relevant legal provisions as to open courts and judicial precedents galore, no legal hindrance to the overral digitalization of the judiciary and the operation of the virtual courts varying from case to case for all purposes of the Ordinance No.1 of 2020 even in normal times is contemplated. One only hopes that someone competent is out there to bell the cat.

Principle of Non- Refoulement : Bangladesh and India Perspectives

The Rohingya muslims from the Rakhine State formerly known as Arakan of Myanmar bordering Bangladesh constitute, per the United Nations Organization (UNO), the most persecuted minority community in the world.This being a known fact for decades since Myanmar (Burma) gained independence on 4 January, 1948 has now been recognized by courts of law across the globe with the International Court of Justice (ICJ) on top of them all by way of the verdict in **The Gambia Vs. Myanmar.**

Having been subjected to inhumane torture, oppression and acts of genocide by both State and Non-State actors within Myanmar, more than a million of Rohingyas fled to Bangladesh over the last couple of years. Several thousands of them sought safety and shelter in places including Assam and the outskirts of Jammu and Kashmir in India as well.While these overwhelming number of Rohingya refugees stay sheltered in a total of 34 make-shift camps at Ukhiya and Teknaf Upazillas in Cox'sBazar, the local people hosting the refugees appear to be, if the mainstream and social media is anything to go by, making incessant demands for the refugees to be sent back to the country of origin, e. g, Myanmar at any cost.

In any given refugee situation, there are three vaible or durable solutions recognized and practised by actors including the UNO and they are Repatriation, Resettlement and Naturalization. Simply put, Repatriation refers to the process of sending the refugees back to the country of origin from the country of refuge and Resettlement means the process of letting the refugess settle down permanently in third countries beyond the countries of origin and refuge while Naturalization is the process of granting citizenship to the refugees by the country of refuge. Repatriation being the best of these three options, countries of refuge usually opt for the same.

Repatriation as a durable solution to the refugee crisis is clothed with corollary conditions-one being the utmost adherence to the principle of non-refoulement. In legal parlance, non-refoulement is indicative of the practice of not forcing refugees to return to the country of origin wherein they are liable or likely to be subjected to persecution. In other words, Repatriation is a volutary process which can not resorted to unless and until overall situations on the ground in the country of origin are conducive to life and proprty of the refugees. As innumerable reports by reputed international organizations suggest, things have not budged an inch for the better for the Rohingyas in Myanmar for repatriation to be taken up till date.

Since the recent outbreak of the influx of Rohingya refugees, Bangladesh under a Memorandum of Understanding (MoU) reached earlier with Myanmar, has tried taking up repatriation at least twice, but in vain. The refugees concerned simply refused to show up at the eleventh hour citing risks to their lives in Myanmar. As a result, Bangladesh has had to back down for the time being reiterating that non-refoulement will be execrised and respected. On the other hand, the Government of India led by Narendra Modi sent some Rohingyas back to Myanmar against their will in flagrant violation of non-refoulement, judicial precedents laid down by indian courts of

law as well as other UN conventions and protocols as opposed to what came to pass here in Bangladesh.

Government functionaries of both Bangladesh and India tend at times to contend that strict adherence to non- refoulement is not meant for them as they are not signatories to the Convention Relating to the Status of Refugees,1951 and the corresponding Protocol Relating to the Status of Refugees, 1967. The fallacy of such a contention has adequately been addressed by the competent Courts of Law in both the countries. In what is perhaps the only Case-Law from Bangladesh jurisdiction bearing direcly upon the issue at hand, i.e., the Case of **Refugee and Migratory Movements Research Unit (RMMRU) Vs. Government of Bangladesh** (Writ Petition No. 10504 of 2016), a Division Bench of the High Court Division of the Supreme Court of Bangladesh per Mr. Justice Moyeenul Islam Chowdhury held, inter alia, that " ***Though Bangladesh has not formally ratified the Convention relating to the Status of Refugees, yet all the refugees and asylum-seekers from scores of countries of the world to other countries have been regulated by and under the Convention for more than 60 (Sixty) years. The Convention by now has become a part of customary international law which is binding upon all the countries of the world, irrespective of whether a particular country has fromally signed, acceded to or ratified the Convention or not. Indisputably Bangladesh is a signatory to the Convention against Torture and other Cruel, inhuman or degrading Treatment or Punishment, 1987. Article 3 of this Convention of 1987 provides that no State Party shall expel, return ("Refouler") or extradite a person to other State where there are substantial grounds for believing that he would be in danger of being subjected to torture."*** This Writ Petition related to a Rohingya refugee convicted by the trying magistrate in Chattogram under Section 14 of the Foreigners Act, 1946; the convict even after serving out his term of imprisonment continued to be in jail. By way of the said judgment, the convict was released, but not returned or extradited to Myanmar. Rather, he was handed over to RMMRU for coordinating with UNHCR for shelter in the refugee camps in Cox'sBazar.

We may now turn to the indian jurisdiction with a view to shedding light on what the Supreme Court of India and various High Courts there hold on non- refoulement.In the case of **State Of Arunachal Pradesh Vs. Khudiram Chakma** reported in 1994 AIR 1461 & 1993 SCR (3) 401, the Supreme Court of India held, inter alia, that a person seeking refuge or asylum in a State can not be sent back to the State from where he has arrived if the risk of persecution is there. In the case of **NHRC Vs. State of Arunachal Pradesh** reported in 1996 AIR 1234 & 1996 SCC (1) 742, the Supreme Court of India emphasized on the protection of rights of the refugees in India as embodied in the Constitution of India holding further that rule of law must be upheld and the right to life extends equally to both citizens and non-citizens. The Supreme Court of India relying on the principle of non- refoulement in this case directed the government not to refoule the Chakma refugees who were the nationals of Bangladesh. In the case of **Ananda Bhavanani alias Swami Geethananda, Ananda Ashram, Pondicherry Vs. Union of India** reported in 1991 MLW (Crl) 393, the Madras High Court held that in the absence of any threat to the national security posed by refugees, a deportation order would amount to violation of the principle of natural justice. The Andhra High Court in the case of **P. Nedumaran Vs. Union of India** reported in 1993 (2) ALT 291 & 1993(2) ALT Cri 188 allowed Srilankan refugees to stay in India subject to the determination of their status as refugees by the UNHCR.In the case of **Ktaer Abbas Habib Al Outaifi Vs. Union of India & Others** reported in 1999 Cri. L.J 919,

the Gujrat High Court upheld the principle of non- refoulement in favour of two Iraqi refugees who were persecuted in Iraq for refusing to join military operations there. Placing reliance on Article 33 of the Convention Relating to the Status of Refugees,1951, Article 3 of the Universal Declaration of Human Rights,1948 and Article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,1987 together with the indian constitutional provisions, the Gujrat High Court endorsed right of non- refoulement. But back in 2018, in what is seen as a sharp contrast to all these precedents cited herein above, led by Mr. Justice Ranjan Gogoi hailing from Assam where anti-muslim sentiments reign supreme, the **Supreme Court of India refused to Stop Deportation of 7 Rohingyas.**

Political stands of the respective governments and the latest judicial approaches adopted by the Supreme Courts of both Bangladesh and India with regard to the principle of non- refoulement taken together, Bangladesh undoubtedly has the upper hand over her counterpart. Of course, there being no room for complacency as regards the Rohingya issue on the part of Bangladesh, all possibilities of making sure that an early repatriation of the refugees takes place in compliance with domestic and international law should be explored in all earnestness.

Dress Code for the Lawyers Revisited

The legal profession universally recognized as one of the noblest callings is characterized by distinctive features including a dress code meant for the lawyers in action and prescribed by competent authorities concerned.

The lawyers in Bangladesh are required to comply with the dress code as laid down in The Supreme Court of Bangladesh (Appellate Division) Rules,1988 (as ammended in 2008), The

Supreme Court of Bangladesh (High Court Division) Rules,1973, the Civil Rules and Orders and The Criminal Rules and Orders (Practice and Procedure of Subordinate Courts), 2009.

Rule 38 of Order IV of the Supreme Court of Bangladesh (Appellate Division) Rules, 1988 states that, " ***The dress prescribed for Advocates is a short coat or sherwani of black material, white shirt with turned down collar and white bands: in the summer, white trousers, and in winter, trousers of materials in deeper shades of grey. The Advocate shall wear a short black gown in Court, unless the Court directs otherwise. The dress for Senior Advocates shall be similar, with the following additional requirement, viz, they shall wear a gown as prescribed for Barristers appearing before the High Court in London. The dress for Advocates-on-Record shall be as that for the Advocates of the Court***."

Rule 2(2) of Chapter XVI-A of the Supreme Court of Bangladesh (High Court Division) Rules, 1973 provides that, " ***The dress of Advocates shall be as follow: (a) a coat or sherwani of black materials; (b) white shirt with turned up collar and white bands; (c) trousers of black or light coloured materials; (d) Advocate's gown (half sleeved of black colour)".*** Besides, Rule 3 of the same Chapter states that " ***Female Advocates may wear white or light cloured shari or shalwar kamiz of white colour materials. All female Advocates shall wear black coat. Female Advocates using shari or shalwar kamiz shall also wear white collar with white band. A female Advocate shall wear the Advocate's gown specified above."*** Furthermore, Rule 4 the said Chapter provides that, " ***Advocates enrolled with the Appellate Division may wear the dress prescribed for the Appellate Division."***

Rule 487 of Chapter XXIX of the Criminal Rules and Orders (Practice and Procedure of Subordinate Courts), 2009 states that, " ***Advocates of the Supreme Court shall, when appearing in any Court of Session, Tribunal or any Court of Judicial Magistrate, wear the same gown as in the Supreme Court"*** while Rule 488 of this Chapter provides that, ***" All male Advocates, appearing before the Subordinate Courts, shall wear the following as part of their respective dress:- (i) black buttoned coat or black chapkan, achkan or sherwani with black half-sleeved gown and band, or (ii) black open breast coat, white shirt, stand-up winged white collar, stiff or soft, with a black gown and band, (iii) In either case, long trousers (white, black or black-striped or grey) shall be worn, (iv) if European dress is worn, then a black coat with dark or white trousers and a black or dark coloured plain tie and the gown.***Besides, Rule 489 of the same Chapter has it that, "***All lady Advocates, appearing before the Subordinate Courts, shall wear the following as part of their respective dress:-black full sleeved jacket or blouse, stand-up winged white collar, stiff or soft, with a black gown and band, shari or shalwar kamiz (white or black) shall be worn"*** with the note that the wearing of the prescribed dress is

compulsory for all Advocates**.**Civil Rules and Orders contain, more or less, the same dress code as prescribed for the Subordinate Courts. Surprising as it may sound, the Bangladesh Legal Practitioners and Bar Council Order, 1972 does not contain any provision as to the dress code for the lawyers.

What is explicitly discernible from the provisions of law referred to herein above is that notwithstanding slight differences in the dress code for the lawyers based on their gender and professional standing, it is compulsory for all Advocates to wear coat and gown to move before any Court in Bangladesh.

The very concept of such a dress code for the lawyers in Bangladesh and neighbouring countries is traced back to the Britishers who lorded over the subcontinent for nearly two centuries. The suitability of the said dress code, especially the need for wearing coat and gown irrespective of the seasonal high temperature much to the peril and health hazards of the lawyers have been questioned time and again. There are lawyers who term the dress code as **a cause of great discomfort** especially during the summer season. Some lawyers are also of the opinion that the dress code in vogue **amounts to violation of the right to life** as enshrined in Article 31 of the Constitution of Bangladesh and as enunciated in the case of **Dr. Mohiuddin Farooque Vs. Government of Bangladesh** reported in 22 BLD (HCD) (2002) 534. Even some judges working in the lower judiciary subscribe to the view that the dress code relates to **colonial mindset** among the stake-holders. Barring a few, lawyers at large in Bangladesh appear to, per at least their columns and articles published in newspapers and law journals plus daily conversations in the court premises, be in favour of easing the strict provisions of the dress code so far as compulsory wearing of the coat and gown is concerned. Unlike their counterparts from India, Bangladeshi lawyers have neither taken to the streets nor filed any Writ Petitions in the form of Public Interest litigation (PIL) seeking to scrap the dress code or to have it significantly amended.

An interesting case that comes to mind in connection with the dress code for lawyers in India is **Prayag Das Vs. Civil Judge, Bulandshahr and Others** reported in AIR 1974 All 133. Mr. Prayag Das, an Advocate practising before the Mofussil Courts in Bulandshahr, filed a Writ Petition before the Allahabad High Court praying for recognition of Dhoti and Kurta as Court Dress as against coat and gown. The Allahabad High Court dismissed the petition in limine holding, inter alia, that***, "In our opinion the various rules prescribing the dress of an Advocate serve a very useful purpose. In the first place, they distinguish an Advocate from a litigant or other members of the public who may be jostling with him in a Court room. They literally reinforce the Shakespearian aphorism that the apparel oft proclaims the man. When a lawyer is in prescribed dress his identity can never be mistaken. In the second place, a uniform prescribed dress worn by the members of the Bar induces a seriousness of purpose and a sense of decorum which are highly conducive to the dispensation of justice. Of late there has been a lamentable slackness in matters of lawyers' dress. We feel that the lifting of a prescribed dress for Advocates and courts is apt to precipitate sartorial inelegance and judicial indecorum. If the rule is relaxed it is not unlikely that Advocates may start dressing themselves more and more scantily and even indiscreetly."***

Though the Apex Courts of the Sub-Continent tend, as apparent from judgment cited above, to hold on to the traditional dress code inherited from a colonial regime irrespective of the risks to

the health and well-being of the lawyers, the Coronavirus Pandemic has been instrumental in bringing about temporary changes to the dress code. The Supreme Court of Bangladesh has relaxed the dress code by way of temporarily setting at naught the requirement of putting on the gown in the course of hearings on petitions for bail vide the **Practice Directions** dated 10 May, 2020 for the purpose of Virtual Courts. The Supreme Court of India issued a **Circular** dated 13 May, 2020 to the effect that Advocates may wear "Plain white-shirt/white-shalwar-kamiz/white-saree with a plain-white neck band" during the hearings before the Supreme Court of India through Virtual Court System till medical exigencies exist. And on the following day, the Bar Council of India followed suit by way of passing an **Order** to the same effect.

The Pandemic will, for sure, disappear one of these days. But the health hazards and acute discomfort caused by the colonial dress code for the lawyers in these parts of the world might not. As regards the dress code, the hon'ble Supreme Court of Bangladesh may most graciously make such rules as would befit the local atmosphere by dint of amending the existing rules. This is all the more so when the Britishers, the original makers of the dress code, have themselves done away with most of the requirements of the dress code by now. Alternatively, it is the public-spirited lawyers who should be up and doing to do the needful in this regard.

Citizenship of the Rohingyas as Viewed by the Apex Courts of Myanmar

It is common knowledge that the Rohingyas from the Arakan (renamed Rakhine) State of Burma (renamed Myanmar) sheltered in Bangladesh have been denuded of citizenship by the successive military and pseudo-civilian governments of Burma/Myanmar, effectively rendering them stateless; the racist Burma/Myanmar authorities have done so on the claim that the Rohingyas are not citizens of Burma/Myanmar; rather they are Bangladeshis who had migrated to Burma/Myanmar earlier. They tend to base their claim on the fact that the religion, language, customs, traditions and physical appearance of the Rohingyas differ significantly with that of the other communities in Burma/Myanmar. On the contrary, the Rohingyas themselves, independent researchers, historians, international organizations and the Bangladesh authorities contend that such claims by the Burma/Myanmar authorities are false, unfounded and illegal as the Rohingyas having been born and lived in Burma/Myanmar for centuries are bona fide citizens of Myanmar both de facto and de jure.

Against the backdrop of such contradictory assertions, one may refer profitably to relevant judicial precedents laid down and judgments passed by the Apex Courts of including the Supreme Court of Union of Burma/Myanmar. There are, in fact, a number of judgments passed by the then Supreme Court of the Union of Burma and other Courts of higher instances reported in the now defunct law journal Burma Law Reports (B.L.R) that lend support to the contention that the Rohingyas are citizens of Myanmar. Mention may in this connection be made of cases such as **Hasan Ali Vs. Secretary, Ministry of Immigration and National Registration and One** reported in 1959 B.L.R (SC) 187, **Asha Bi Bi & Abdul Rahim Vs. The Union of Burma** reported in 1965 B.L.R (CC) 1, **Peer Mohamed Vs. Union of Burma** reported in 1965 B.L.R (CC) 51 and **Gulbahar Vs. Union of Burma** reported in 1965 B.L.R (CC) 811.

In the case of **Hasan Ali Vs. Secretary, Ministry of Immigration and National Registration and One**, the immigration authorities of Burma arrested Hasan Ali along with some 200 other Rohingyas from the district of Akyab in Arakan on the allegation that he and the other arrestees were citizens of the then East Pakistan illeaglly staying in Burma. While in detention meant for deportation to East Pakistan, Hasan Ali and Meher Ali filed a Writ of Habeas Corpus before the Supreme Court of the Union of Burma alleging, inter alia, that they were bona fide citizens of Burma; hence the Orders relating to their arrest and detention were illegal and they were liable to be set at liberty as citizens of Burma. In the Judgment delivered on 4 November, 1959, the Supreme Court of Union of Burma per Mr. Justice U Myint Thein, C.J. held, inter alia, that, "***We note that the 1st respondent in his returns, has stated that the applicants are Pakistanis in appearance; that they have no knowledge of the Burmese or the Arakanese languages; and that they are unable to answer questions relating to events which had occurred in Arakan during the past decade. From these, he stated, the Immigration authorities were satisfied that the applicants are illegal immigrants of recent origin. It must be borne in mind that it is the President or the competent authority who must be satisfied. Further, in applying the tests which the 1st respondent has mentioned, section 4 (2) of the Union Citizenship Act must not be lost sight of. A person descended from ancestors who for two generations have made***

Burma their permanent home, and whose parents and himself were born in Burma, is a statutory citizen. Today in various parts of Burma there are people who, because of their origin and isolated way of life, are totally unlike the Burmese in appearance and who are unable to speak the language or speak of events which had occurred outside the limits of their habitation. They are nevertheless statutory citizens under the Union Citizenship Act. The applicants claim that they belong to that category. They may be right and therefore the opportunity of proving that they are, should be given to them. To deny them this opportunity would be a violation of their fundamental rights. The detention of Hasan Ali, son of Abbas Ali, and Meher Ali, son of Nazir Hussein, under section 7 (2) of the Burma Immigration Act under the orders of an Immigration Officer is unwarranted in law and therefore the orders under which they are detained in the Rangoon Central Jail are quashed. They will be released forthwith."

In the case of **Asha Bi Bi & Abdul Rahim Vs. Union of Burma**, Asha Bibi and Abdul Rahim being Rohingya siblings from Arakan were prosecuted and convicted of being foreigners from the then East Pakistan and sentenced to pay fines of Kyats 100 each. What transpired during the course of the trial before the trying Magistarte were that Asha Bi Bi and Abdul Rahim were the children of one Sultan Mohamed, a Pakistani citizen; In 1958, Sultan Mohamed took both of his children on a tour to Pakistan where they stayed for two months; The names of Asha Bi Bi and abdul Rahim who were mere minors at that time were borne on their father's Pakistani Passport. On their arrival back in Burma, Sultan Mohamed obtained permits for stay in Burma for himself and for his two children. Upon the expiry of the permits, Asha Bi Bi and Abdul Rahim did not renew the same claiming that they were Burmese citizens by birth and they were not required to be issued any permits for stay in Burma.Though the trying Magistrate found that Asha Bi Bi and Abdul Rahim were born in Burma and that their mother. and grandmother were of Burmese origin and for the said reasons, they were prima facie citizens of the Union of Burma by birth, he convicted them only for the reason that their names were borne out in the passport of their Pakistani father. Asha Bi Bi and Abdul Rahim filed an application for revision against the conviction before the Sessions Judge who recommended to the Chief Court that the conviction should be set aside. As the law stood in those days in Burma, the Sessions Judges were only to recommend reversal of judgments passed by Magistrates and the same were subject to confirmation by the Chief Court presided over by a Judge of Supreme Court of Union of Burma.While confirming the recommendation of the Sessions Judge, the Chief Court held, inter alia, that Asha Bi Bi and Abdul Rahim were minors when their Pakistani father took them out of Burma for a short stay; It was·not by their own volition that their names were carried on their father's passport on their return; Nor did the children themselves apply for stay permits; A natural born citizen does not lose his citizenship and become a foreigner even if he takes out a foreign passport under compelling circumstances; Asha Bi Bi and abdul Rahim themselves never took out Pakistani passports nor registered themselves as Pakistani citizens with the Embassy of Pakistan in Rangoon now renamed Yangon.

In the case of **Peer Mohamed Vs. Union of Burma**, Peer Mohamed, a Rohingya from Arakan, was tried on the allegation that he was a foreigner from the then East Pakistan. Peer Mohamed defended himself on the averments that he was not a foreigner, rather he was a bonafide citizen of Burma by birth; he examined two witnesses in his favour before the trying Magistrate as well. He was nevertheless convicted of being a foreigner by the said Magistrate; he filed an

application for Criminal Revision before the Sessions Judge Concerned; the Sessions Judge in turn recommended for setting aside the conviction.. Hence, the recommendation of setting aside the conviction of Peer Mohamed was adjudicated upon by the Chief Court, thus upholding the same and reversing the judgment of conviction impliedly recognizing Peer Mohamed as a citizen of Burma.

In the case of **Gulbahar Vs. Union of Burma**, Gulbahar, a Rohingya lady from Arakan was tried and convicted of being a foreigner by the Court of a Magistrate. Gulbahar stated during the course of the trial that she and her parents were born at village Panmraung under Akyab in Arakan and that her grandparents also settled and died there; she therefore was a statutory citizen of Burma. While the trying Magistrate accepted the fact that Gulbahar and her parents were born at village Panmraung and that she and her ancestors had been in Burma for three generations, he held that village Panmraung was in Chittagong of the then East Pakistan and therefore, Gulbahar must be deemed to be a foreigner and as such he convicted her and sentenced her to pay a fine of Kyats 30 in default whereof to undergo one month's rigorous imprisonment. Being dissatisfied with the said order, Gulbahar filed an application for revision before the Sessions Judge concerned praying for setting aside the conviction and sentence passed against her by the lower Court. Upon perusal of the records including the Burma Gazetteer, the learned Sessions Judge came to the conclusion that village Panmraung was not in Chittagong, but in Akyab of Arakan; therefore, Gulbahar could not be deemed to be a foreigner, but she should be deemed to be a statutory citizen of the Union of Burma; he recommended to the Chief Court to set aside the conviction and sentence passed against Gulbahar.Concurring with the recommendation of the Sessions Judge, the Chief Court held, inter alia, that Gulbahar and her ancestors had been in Burma for 3 generations; she as well as her parents were born in a village in Arakan; therefore she could not be deemed to be a foreigner and as such she must be deemed to be a citizen of the Union of Burma.

As evident from the Judgments referred to herein above, the Apex Courts of Burma held, time and again, that those born in Burma are bona fide citizens of Burma by birth.Citizenship by birth being an internationally recognized principle was, not unlike courts of law worlwide, duly upheld by the Courts of law in Burma. What is more, the Supreme Court of Union of Burma made it abundantly clear that differences of religion, language and physical appearance do not make one liable to be stripped of citizenship. But the successive governments of Burma have, in stark contrast, acted quite illegally in terms of their dealings with the Rohingyas despite the fact that the Rohingyas are citizens of Burma by birth.

Surprising as it may sound, despite having to shoulder the heavy burden of the overwhelming number of Rohingya refugees and with Myanmar repeatedly claiming that the Rohingyas are Bangladeshis, the Bangladesh authorities have never been adequately vocal in their dealings with Myanmar with regard to the citizenship of the Rohingyas. So is it with the international organizations. Even in lawsuits relating to the Rohingyas now scattered the world over, there is virtually no reference to or reliance on these weighty court cases adjudicated upon by the Apex Courts of Burma. As a matter of fact, it is high time pressure was mounted on Myanmar placing relaince on favourable precedents from Myanmar's own legal sources as Bangladesh, the United Nations Organization (UNO) and other actors concerned take on Myanmar as to the citizenship of the Rohingyas.

Covid-19 and the Right to a Decent Burial

With the break out of the current global pandemic Covid-19, pathetic and deplorable incidents as regards the unfortunate victims of the pandemic continue unabated, giving rise to legal issues and questions of unusual nature that warrant examination. One of these happens to be the right of the deceased to a decent burial.

As elsewhere in the subcontinent in general and in India and Srilanka in particular, there have also been reports of people hailing from different parts of Bangladesh opposing or resisting the burial of victims of Covid-19 for fear of the spread of Covid-19 infections in their respective localities. Such opposition or obstruction inevitably leads to increased hardship and untold mental agony on the part of the family members, volunteers and officials concerned with a befitting burial of those dying of Covid-19. More importantly, under the circumstances, the victims are deprived of the legal and religious right to a decent burial. In response to the said phenomena, the World Health Organization (WHO) clarified and confirmed that dead bodies are not contagious after 3 hours of death, thus paving the way for Covid-19 victims to be buried the safe way. In line with the findings and recommendations of WHO, governments including that of Bangladesh have come up with guidelines to be followed for proper burial.

Apart from the sheer ignorance emanating from erroneous perceptions as to Covid-19, a number of other factors appear to have triggered the problems with the burial of Covid-19 victims. As for Srilanka, the government itself there came up with a guideline requiring the muslim victims of Covid-19 to be burnt to ashes as against the islamic rites of burial. Shocked and dismayed, public-spirited muslims in Srilanka are reported to have filed a Fundamental Rights (FR) Petition akin to Writ Petition before the Supreme Court of Srilanka against the same. And in India, it was a resident of Mumbai who took it upon himself to move the Bombay High Court seeking to restrain muslims from burying the dead who succumbed to Covid-19.

Pleasant it is that in a liberal and progreesive interpretation of the right to life as enshrined in Article 32 of the Constitution of Bangladesh and in Article 21 of the Constitution of India, the Apex Courts have by now recognized, vide various judgments, the right of the dead to a decent burial as an indispensable right innate in the very right to life itself.

In **Human Rights and Peace for Bangladesh (HRPB) Vs. Bangladesh** (Writ Petition No. 7786 of 2012) being a case that sought to challenge the refusal to hand over the dead body of a newborn child to his parents due to inability to pay hospital bills, a Division Bench of the High Court Division of the Supreme Court of Bangladesh held, per Mr. Justice Syed Muhammad Dastagir Husain, J that, "***A dead body of a human being deserves a respected burial and it must not be held as a mere product for recovering the outstanding dues of a dead patient***."

In **Pt.Parmanand Katara Vs. Union of India** reported in 1995 (3) SCC 248, the Supreme Court of India held, inter alia, that, "***We agree with the petitioner that right to dignity and fair treatment under Artcle 21 of the Constitution of India is not only available to a living man but also to his body after his death***."

In **Ashray Adhikar Abhiyan Vs. Union of India** reported in AIR 2002 SC 554, the issue for adjudication before the Supreme Court of India related to the right of a deceased homeless

person to a decent burial. The Supreme Court of India disposed of the case affirming the right of such a deceased to a decent burial as per his or her religious belief.

In **S.Sethu Raja vs The Chief Secretary,** a case filed for directions upon the government to bring back the dead body of an Indian citizen from Malayasia, the Madras High Court held, inter alia, that, "***By our tradition and culture, the same human dignity (if not more), with which a living human being is expected to be treated, should also be extended to a person who is dead. The right to accord a decent burial or cremation to the dead body of a person, should be taken to be part of the right to such human dignity."***

In **Pradeep Gandhy vs. State of Maharashtra** reported in (2020) SCC OnLine Bom 6621, a direction restraining the burial of the dead bodies of the muslims who died of Covid-19 in muslim graveyards in Mumbai was prayed for. The petitioner also prayed for interim Orders.The Bombay High Court disposed of the petition holding, inter alia, that, "***The Government of India through the Ministry of Health and Family Welfare has issued guidelines for dead body management during the current COVID-19 pandemic. These guidelines clearly state that there is unlikely to be an increased risk of COVID infection from a dead body to health workers or family members who follow standard precautions while handling the dead body. These guidelines further contemplate the burial of the deceased persons and how the same is to be handled is also set out in the said guidelines.This being the case, I do not think that there can be any ad-interim relief granted in the present petition directing any authority to restrain any person from burying their deceased.***"

In what is a latest judicial development, the Madras High Court has intervened in matters related to the right of a deceased to burial in April this year by way of **Suo Motu Writ Petition No. 7492 of 2020** . The factual matrix in the Suo Motu Writ Petition No. 7492 of 2020 are that a medical doctor with co-morbidity died of Covid-19; the dead body was taken to a cemetary; the local people showed up and opposed the burial; they vandalised the ambulance and assaulted the people accompanying the dead body; as a consequence, the dead body had to be carried elsewhere for burial. In this case, the Madras High Court held, inter alia, that, " ***In the considered opinion of the Court, the scope and ambit of Article 21 includes right to have a decent burial. It Prima Facie appears that as a consequence of the abovesaid alleged acts, a person who practised a noble profession as a doctor and breathed his last has been deprived of his right to have a burial in a cemetary earmarked for that purpose and that apart, on account***

of the law and order problem created, the officials who have performed their duties, appeared sustained grievous injuries."

The rites of and the right to burial thus conforming to the right to life are to be respected and those vitiating the same are to be brought to book.A campaign aimed at educating the masses dispelling the rumours and unfounded perturbations coupled with fears about Covid-19 is what is missing at the moment.

With the dreadful curve of Covid-19 spiking higher everyday, none of us is sure of what is in store for us in the days to come. More and more deaths seem to be in the offing. As we keep on trying hard to keep the pandemic at bay, we can not afford to lose sight of those who are dying from amongst us as well; we owe them a debt of gratitude and respect at the parting hours.

On Muslim Female Marriage Registrars

Ours is an age characterized by tremendous progress achieved in terms of empowerment of women in all strata of life. Governments in general and the judiciary in particular tend to be up and doing to make sure that women enjoy equal rights at par with men.

There are times that get us baffled, though. The Judgment handed down in the Ayesha Siddiqua Case (Writ Petition No. 6466 of 2014) has come as a surprise to many.

Egypt and Qatar, two muslim-majority countries, have had females registering marriages of muslim couples for long now.

We have, amongst us, ladies at the helm of affairs of the state. Apart from those officiating at all the tiers of the civil administration, there is by now hardly any disciplined force sans female members in our country.

That a marriage ceremony is essentially a religious ceremony is being debated.

Whether females should stand deprived of the fundamental right to equality in employment due to failure of the state to develop transportation system is a serious question to ponder over, indeed.

Dogmatic theories of purity and for that matter, impurity are required to be examined under the judicial scanner afresh.

An appeal having reportedly been filed as to the said judicial pronouncement, strong feelings are required to be restrained; it is now up to the Apex Court to adjudicate upon the matter.

One may look forward to an occasion to celebrate once the Apex Court decides the matter taking into account all the issues involved.